

ASSEMBLY BILL

No. 2113

Introduced by Assembly Member Evans

February 18, 2010

An act to amend Sections 17041.5 and 18663 of, to add Chapter 3.8 (commencing with Section 7295) to Part 1.7 of Division 2 of, and to add Chapter 2.2 (commencing with Section 17065) to Part 10 of Division 2 of, the Revenue and Taxation Code, and to amend Section 13020 of the Unemployment Insurance Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2113, as introduced, Evans. Local taxation: personal income taxes: vehicle license fees.

(1) Existing law authorizes various local governmental entities to impose local taxes for various purposes.

This bill would authorize the board of supervisors of any county or city and county, by ordinance, to propose to the voters either a local personal income tax or a local vehicle license fee, or both, in accordance with specified requirements.

This bill would require the Department of Motor Vehicles to administer the local vehicle license fee, and would require, prior to the operative date of any ordinance imposing a local vehicle license fee, the county or city and county to contract with the Department of Motor Vehicles to perform this function. This bill would require the county or city and county to reimburse the Department of Motor Vehicles pursuant to the contract. This bill would require the revenues derived from the local vehicle license fee to be deposited in the State Treasury to the credit of the Local Vehicle License Fee Account, which this bill

would create. This bill would continuously appropriate those moneys to the Controller for allocation to each county and city and county in which the local vehicle license fee is imposed.

This bill would allow the local vehicle license fee to be deducted from the tax imposed under Personal Income Tax Law and the Corporation Tax Law, and would require the county or city and county to reimburse the General Fund for these losses, as provided.

This bill would require the Franchise Tax Board to administer the local personal income tax, and would require, prior to the operative date of any ordinance imposing a local personal income tax, the county or city and county to contract with the Franchise Tax Board and the Employment Development Department to perform their functions. This bill would require the county or city and county to reimburse the Franchise Tax Board and the Employment Development Department pursuant to these contracts. This bill would require the Franchise Tax Board to permit the county or city and county to examine personal income tax records, as provided.

This bill would authorize the Franchise Tax Board to adopt regulations necessary to administer the local personal income tax. This bill would require the revenues derived from the local personal income tax to be deposited in the State Treasury to the credit of the Local Personal Income Tax Account, which this bill would create. This bill would continuously appropriate those moneys to the Controller for allocation to each county and city and county in which the local personal income tax is imposed.

(2) Existing law requires the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding state personal income taxes on wages paid.

This bill would require the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding both state personal income taxes and local personal income taxes on wages paid.

(3) Existing law requires an employer who pays wages to a resident employee for services performed within or without this state to withhold from those wages, except as provided, specified state personal income taxes.

This bill would require an employer who pays wages to a resident employee to withhold from those wages both state personal income taxes and local personal income taxes.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.8 (commencing with Section 7295) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 3.8. COUNTY INCOME TAXES AND VEHICLE LICENSE FEES

7295. In addition to any other tax authority provided by law, the board of supervisors of any county or city and county may, by ordinance, place on the ballot either or both of the following for consideration by the voters in accordance with all constitutional and statutory requirements:

(a) A local personal income tax subject to the following conditions:

(1) The local personal income tax shall be calculated as a percentage of tax liability after reduction for personal exemption credits shown on the state personal income tax return filed for a taxable year by a resident of the county in which the local personal income tax is imposed.

(2) The local personal income tax shall be assessed and collected by the Franchise Tax Board in accordance with Chapter 2.2 (commencing with Section 17065).

(b) (1) A local vehicle license fee on any vehicle, registered within the county or city and county in which the local vehicle license fee is imposed, that is subject to registration under the Vehicle Code and on which a vehicle license fee is imposed pursuant to Part 5 (commencing with Section 10701), shall be subject to the following conditions:

(A) (i) If the election in which the local vehicle license fee receives voter approval occurs between January 1 and June 30, the local vehicle license fee shall be imposed on and after the first January 1 that follows that election.

(ii) If the election in which the local vehicle license fee receives voter approval occurs between July 1 and December 31, the local

1 vehicle license fee shall be imposed on and after the first July 1
2 that follows that election.

3 (B) Each county and city and county shall only establish one
4 countywide local vehicle license fee rate.

5 (C) (i) The local vehicle license fee shall be allowed as a
6 deduction for the state personal income tax imposed under Part 10
7 (commencing with Section 17001) and the corporation tax imposed
8 under Part 11 (commencing with Section 23001) for the taxable
9 year within which the local vehicle license fee shall be paid or
10 accrued.

11 (ii) The county or city and county shall fully reimburse the
12 General Fund from the revenues collected from the local vehicle
13 license fee for the revenue losses incurred pursuant to clause (i).

14 (D) (i) The Department of Motor Vehicles shall administer the
15 local vehicle license fee.

16 (ii) Prior to the operative date of any ordinance imposing a local
17 vehicle license fee, the county or city and county shall contract
18 with the Department of Motor Vehicles to perform all functions
19 incident to the administration of the local vehicle license fee.

20 (iii) The contract shall contain a provision that the county or
21 city and county shall reimburse the Department of Motor Vehicles
22 for all refunds, losses, and costs incurred in the administration and
23 operation of the local vehicle license fee.

24 (E) The local vehicle license fee shall be assessed and collected
25 in the same manner as the fee imposed by Part 5 (commencing
26 with Section 10701).

27 (2) (A) Amounts collected pursuant to this subdivision shall
28 be transmitted to the Treasurer and deposited in the State Treasury
29 to the credit of the Local Vehicle License Fee Account in the
30 General Fund, which is hereby created.

31 (B) Notwithstanding Section 13340 of the Government Code,
32 the moneys in the Local Vehicle License Fee Account are hereby
33 continuously appropriated, without regard to fiscal year, to the
34 Controller for allocation to each county and city and county in
35 which the local vehicle license fee is imposed.

36 7296. For the purposes of this chapter, "resident" means any
37 individual who lives or is located in a county or city and county
38 on more than a temporary or transient basis.

39 SEC. 2. Section 17041.5 of the Revenue and Taxation Code
40 is amended to read:

1 17041.5. Notwithstanding any statute, ordinance, regulation,
2 rule, or decision to the contrary, no city, ~~county, city and county,~~
3 governmental subdivision, district, public and quasi-public
4 corporation, municipal corporation, whether incorporated or not
5 or whether chartered or not, shall levy or collect or cause to be
6 levied or collected any tax upon the income, or any part thereof,
7 of any person, resident or nonresident.

8 This section shall not be construed so as to prohibit the levy or
9 collection of any otherwise authorized license tax upon a business
10 measured by or according to gross receipts.

11 SEC. 3. Chapter 2.2 (commencing with Section 17065) is added
12 to Part 10 of Division 2 of the Revenue and Taxation Code, to
13 read:

14
15 CHAPTER 2.2. LOCAL PERSONAL INCOME TAX
16

17 17065. (a) A local ordinance, authorized pursuant to Section
18 7295, imposing a local personal income tax shall become operative
19 for taxable years beginning on or after January 1 of the first
20 calendar year following approval by the voters of the county or
21 city and county, provided written notice of that approval is
22 provided by the county or city and county elections official no
23 later than September 30 of the preceding calendar year.

24 (b) (1) Each county and city and county shall only establish
25 one countywide local personal income tax rate.

26 (2) For each taxable year for which a local personal income tax
27 is operative under subdivision (a), in addition to any other taxes
28 imposed by this part, an additional tax on the tax liability after
29 reduction for personal exemption credits of a county or city and
30 county resident shall be imposed at the rate approved by the voters
31 of that county or city and county.

32 (c) (1) The local personal income tax shall be based on an
33 individual's county or city and county of residence.

34 (2) A taxpayer shall specify the county or city and county,
35 counties, or counties and city and county of his or her residence
36 for the taxable year when filing a personal income tax return.

37 (3) If a taxpayer resides in more than one county or city and
38 county, the taxpayer shall pay a proportionate share of the local
39 personal income tax of each county or city and county. A
40 proportionate share shall be based on the percentage of time during

1 the taxable year that a taxpayer resides in each county or city and
2 county.

3 (d) For purposes of applying Part 10.2 (commencing with
4 Section 18401) of Division 2, the tax imposed under this section
5 shall be treated as if it were imposed under Section 17041.

6 (e) No credit authorized under this part shall be applied to reduce
7 taxes imposed under this chapter.

8 (f) Amounts paid for the local personal income tax authorized
9 by Section 7295 and imposed in accordance with this chapter shall
10 not be allowed as a deduction under this part.

11 (g) A county or city and county shall not adopt by ordinance
12 any credit or deduction against the local personal income tax.

13 17065.1. Prior to the operative date of any ordinance imposing
14 a local personal income tax, the county or city and county shall
15 do both of the following:

16 (a) (1) Contract with the Franchise Tax Board to perform all
17 functions incident to its administration and operation of the local
18 personal income tax.

19 (2) The contract shall contain a provision that the county or city
20 and county shall reimburse the Franchise Tax Board for all refunds,
21 losses, and costs incurred in its administration and operation of
22 the local personal income tax.

23 (b) (1) Contract with the Employment Development Department
24 to perform all functions incident to its administration and operation
25 of the local personal income tax.

26 (2) The contract shall contain a provision that the county or city
27 and county shall reimburse the Employment Development
28 Department for all refunds, losses, and costs incurred in its
29 administration and operation of the local personal income tax.

30 17065.2. Any payments and credits shown on the return,
31 together with any other credits associated with that taxpayer's
32 account, shall be applied in the following order:

33 (a) Taxes imposed under Part 10 (commencing with Section
34 17001), including penalties and interest, if any, imposed under this
35 part.

36 (b) The local personal income tax authorized by Section 7295
37 and imposed in accordance with this chapter.

38 17065.3. Any information, information sources, or enforcement
39 remedies and capabilities available to the county or city and county
40 shall be made available to the Franchise Tax Board to be used in

1 conjunction with, or independent of, the information, information
2 sources, or remedies and capabilities available to the Franchise
3 Tax Board for purposes of administering the local personal income
4 tax.

5 17065.4. (a) When requested by resolution of the board of
6 supervisors of any county or city and county, the Franchise Tax
7 Board shall permit any duly authorized officer or employee of the
8 county or city and county, or other person designated by that
9 resolution, to examine all of the personal income tax records of
10 the Franchise Tax Board pertaining to the ascertainment of those
11 local personal income taxes to be collected for the county or city
12 and county by the Franchise Tax Board pursuant to contract entered
13 into between the Franchise Tax Board and the county or city and
14 county under this chapter. Except as otherwise provided herein,
15 this subdivision shall not be construed to allow any officer,
16 employee, or other person authorized or designated by a county
17 or city and county to examine any personal income tax records of
18 any taxpayer. The costs that are incurred by the Franchise Tax
19 Board in complying with a request made pursuant to this
20 subdivision shall be deducted, pursuant to the contract specified
21 in subdivision (a) of Section 17065.1, by the Franchise Tax Board
22 from those revenues collected by the Franchise Tax Board on
23 behalf of the county or city and county making the request.

24 (b) The resolution shall certify that any person designated by
25 the resolution, other than an officer or employee, meets all of the
26 following conditions:

27 (1) Has an existing contract with the county or city and county
28 to examine those personal income tax records.

29 (2) Is required by that contract to disclose information contained
30 in, or derived from, those personal income tax records only to an
31 officer or employee of the county or city and county who is
32 authorized by the resolution to examine the information.

33 (3) Is prohibited by that contract from retaining the information
34 contained in, or derived from, those personal income tax records,
35 after that contract has expired.

36 (c) Information obtained by examination of the Franchise Tax
37 Board records as permitted in this subdivision shall be used only
38 for purposes related to the collection of local personal income
39 taxes by the Franchise Tax Board pursuant to the contract, or for

1 purposes related to other governmental functions of the county or
2 city and county set forth in the resolution.

3 17065.5. The Franchise Tax Board may prescribe all rules and
4 regulations necessary and proper to administer this chapter.

5 17065.6. The adoption, amendment, or repeal of a regulation
6 authorized by Section 17065.5 is hereby exempted from the
7 rulemaking provisions of the Administrative Procedure Act
8 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
9 Division 3 of Title 2 of the Government Code).

10 17065.7. (a) Amounts collected pursuant to this section shall
11 be transmitted to the Treasurer and deposited in the State Treasury
12 to the credit of the Local Personal Income Tax Account in the
13 General Fund, which is hereby created.

14 (b) Notwithstanding Section 13340 of the Government Code,
15 the moneys in the Local Personal Income Tax Account are hereby
16 continuously appropriated, without regard to fiscal year, to the
17 Controller for allocation to each county and city and county in
18 which the local personal income tax is imposed.

19 17065.8. For the purposes of this chapter, “resident” means
20 any individual who lives or is located in a county or city and county
21 on more than a temporary or transient basis.

22 SEC. 4. Section 18663 of the Revenue and Taxation Code is
23 amended to read:

24 18663. (a) (1) The Franchise Tax Board shall annually (or
25 more often if necessary) prepare and make available to the
26 Employment Development Department, wage withholding tables
27 that shall be used by every employer making payment of any wages
28 to a resident employee for services performed either within or
29 without this state; or to a nonresident employee for services
30 performed in this state, to deduct and withhold from those wages
31 for each payroll period, a tax computed in a manner as to produce,
32 so far as practicable, with due regard to the credits for personal
33 exemptions allowable under Section 17054, a sum that is
34 substantially equivalent to the amount of tax reasonably estimated
35 to be due under Part 10 (commencing with Section 17001) *or*
36 *reasonably estimated to be due under a local ordinance authorizing*
37 *the imposition of a local personal income tax under Chapter 2.2*
38 *(commencing with Section 17065) of Part 10* resulting from the
39 inclusion in the gross income of the employee the wages which
40 were subject to withholding.

(2) For wages paid on or after November 1, 2009, wage withholding tables prepared by the Franchise Tax Board pursuant to this subdivision shall produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054, a sum that will significantly prevent underwithholding by using an amount equal to 10 percent more than the sum described in paragraph (1).

(b) (1) (A) For supplemental wages paid on or after January 1, 1992, the rate of withholding that may be applied to supplemental wages in lieu of the wage withholding tables specified in subdivision (a) shall be 6 percent.

(B) For supplemental wages paid on or after November 1, 2009, the rate of withholding shall be 6.6 percent.

(2) For purposes of this subdivision, “supplemental wages” includes, but is not limited to, bonus payments, overtime payments, commissions, sales awards, back pay including retroactive wage increases, and reimbursements for nondeductible moving expenses that are paid for the same or a different period, or without regard to a particular period.

(c) (1) For stock options and bonus payments that constitute wages paid on or after January 1, 2002, the rate of withholding that may be applied to those stock options and bonus payments in lieu of the wage withholding tables specified in subdivision (a) shall, notwithstanding subdivision (b), be 9.3 percent.

(2) For stock options and bonus payments that constitute wages paid on or after November 1, 2009, the rate of withholding shall be 10.23 percent.

SEC. 5. Section 13020 of the Unemployment Insurance Code is amended to read:

13020. (a) (1) Every employer who pays wages to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state, shall deduct and withhold from those wages, except as provided in subdivision (c) and Sections 13025 and 13026, for each payroll period, a tax computed in that manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054 of the Revenue and Taxation Code, a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) *or reasonably estimated to be due under a local*

1 *ordinance authorizing the imposition of a local personal income*
2 *tax under Chapter 2.2 (commencing with Section 17065) of Part*
3 *10 of Division 2 of the Revenue and Taxation Code resulting from*
4 *the inclusion in the gross income of the employee of the wages*
5 *which were subject to withholding. The method of determining*
6 *the amount to be withheld shall be prescribed by the Franchise*
7 *Tax Board pursuant to Section 18663 of the Revenue and Taxation*
8 *Code.*

9 (2) For each payroll period ending on or after November 1,
10 2009, the sum shall comport with the changes made to Section
11 18663 of the Revenue and Taxation Code, by the act adding this
12 paragraph.

13 (b) The department upon request may permit the use of
14 accounting machines to calculate the proper amount to be deducted
15 and withheld from wages, if the calculation produces an amount
16 substantially equivalent to the amount of tax required to be
17 withheld under subdivision (a).

18 (c) Withholding shall not be required by this section with respect
19 to wages, salaries, fees, or other compensation paid by a
20 corporation for services performed in California for that corporation
21 to a nonresident corporate director for director services, including
22 attendance at a board of directors' meeting.